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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. 80-1070

DONNA RIDGWAY and
PRUDENTIAL INSURANCE COMPANY OF AMERICA, Petitioners

v.

HAYLEY D. RIDGWAY ET AL, Respondents

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Respondents move pursuant to Rule 53(1) of the Rules of this Court for leave to proceed in forma pauperis for the reasons stated in the attached affidavit.

Dated February 10, 1981

Attorney for Respondents
P. O. Box 190, 83 Pleasant St.
Auburn, Maine 04210

IN THE

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No. 80-1070

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v.

HAYLEY D. RIDGWAY ET AL, Respondents

AFFIDAVIT

I, April Furbush, hereby state under oath as follows:

Subsequent to the death of my ex-husband, Richard Ridgway, I married Carlton Furbush. My three children, none of whom is over the age of 12 years, reside with me and my husband. I am not employed outside the home and have no source of income from which I could finance my children's appeal. My children are in school and have no source of income from which they could pay for the cost of fees or of printing documents.

Dated February 10, 1981

April Furbush

STATE OF MAINE
ANDROSCOGGIN, SS. February 10, 1981

Personally appeared before me the above-named April Furbush and swore to the truth of the foregoing affidavit.

Sandra J. Farrau
Notary Public ~~Justice of the Peace~~

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Petitioners

v.

HAYLEY D. RIDGWAY, LAURIE R. RIDGWAY, and BRADY L. RIDGWAY by their mother and next friend, APRIL D. RIDGWAY,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL COURT OF MAINE

RESPONDENTS' BRIEF IN OPPOSITION

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ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL COURT OF MAINE

RESPONDENTS' BRIEF IN OPPOSITION

The respondents respectfully request that this Court deny the petition for writ of certiorari seeking review of the decision of the Supreme Judicial Court of Maine in this case.

QUESTION PRESENTED

When a serviceman has negotiated a settlement agreement with his wife by virtue of which he agrees to maintain his service life insurance in force after the divorce for the benefit of his children, which agreement is subsequently incorporated into the divorce decree, do the Supremacy Clause and the Servicemen's Group Life Insurance Act prohibit a state

court from imposing a constructive trust on the insurance proceeds for the benefit of the children if the serviceman thereafter names his second wife as beneficiary in defiance of the agreement and then dies?

REASONS WHY THE WRIT SHOULD BE DENIED

I. THE DECISION BELOW OF THE MAINE SUPREME COURT DOES NOT PRESENT A CONFLICT WITH FEDERAL LAW WHICH WARRANTS REVIEW BY THIS COURT.

Petitioners have argued that the decision of the Maine Supreme Court is inconsistent with federal law and with judicial decisions from other jurisdictions. The "conflict" which petitioners perceive is apparent rather than real.

In the first place, petitioners suggest that the decision below is inconsistent with federal law since it limits the rights conferred upon a serviceman by the Servicemen's Group Life Insurance Act to change the beneficiary of his service life insurance whenever he pleases. See e.g. pp. 6 & 7 of the petition. Petitioners have devoted much energy to discussing cases in which inconsistent provisions of state law or state court divorce decrees were held to be pre-empted by federal statutes preserving a serviceman's right to change the beneficiary designation on his military life insurance at any time. See e.g. Prudential Ins. Co. v. King, 453 F.2d 925 (8th Cir. 1971); Stribling v. U.S., 419 F.2d 1350 (8th Cir. 1969); Stratton v. Servicemen's Group Life Ins. Co., 422 F.Supp. 1119 (D. Iowa 1976); Johnson v. Prudential Ins. Co., 182 Neb. 673, 156 N.W.2d 812 (1968) cited at p. 13 of the petition. The "conflict" is illusory since both respondents and the court below have conceded that the federal statutes in question supersede provisions of a state divorce decree requiring a serviceman to maintain his life insurance in force for the benefit of a wife or children by a prior marriage. The real issue is whether, after the designated beneficiary has received the insurance proceeds, he may

nevertheless be subject to a constructive trust in favor of persons whose equitable claims to the proceeds are superior to his own. Since none of the cases cited above even discuss the possibility that a constructive trust should be imposed, they add nothing to a resolution of the issue presented in the case at bar.

In setting out the question presented, petitioners have also omitted any mention of the fact that the divorce decree was based on a settlement agreement between Richard and April Ridgway. The existence of a negotiated agreement between the divorcing parties by virtue of which the serviceman commits himself to keep his military life insurance in force for the benefit of his former wife or children has generally been considered a critical element in cases in which a constructive trust has been imposed on the insurance proceeds. See e.g. McKissick v. McKissick, 560 P.2d 1366 (Nev. 1977); Hundertmark v. Hundertmark, 372 Pa. 138, 93 A.2d 856, 858 (1952). Clearly this was the view of the Maine Supreme Court. See e.g. pp. 16, 23, & 24 of the appendix to the petition.

The existence of the settlement agreement affects the balance of equities between the parties which gives rise to the constructive trust. It is obvious that in negotiating a division of the marital property, April Ridgway may have made concessions in order to secure Richard's agreement to keep his military insurance in force as a potential source of support for the children. When Richard later made Donna the beneficiary of his service life insurance policy, he acted in defiance of his own agreement as well as being in contempt of the court's decree.

Under these circumstances, the courts have held with near unanimity that the beneficiary of the life insurance policy holds the proceeds under a constructive trust for the benefit of those persons who would otherwise be deprived of the benefit of the bargain made by the insured. In a relatively recent opinion, Chief Judge Breitel has written that:

> In the words of Judge Cardozo, "(a) constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee." Simonds v. Simonds, 45 N.Y.2d 233, 380 N.E.2d 189, 193 (1978).

Although petitioners contend that imposing a constructive trust on the proceeds of military life insurance is interdicted by federal law, they have cited no cases reaching this result. Petitioners have cited the case of Suydam v. U.S., 404 F.2d 1369 (D.C. Cir. 1968) as supporting their view that military life insurance can never be the subject of a constructive trust. Petition, p. 11. In that case, however, the military life insurance was never mentioned in the settlement agreement or the divorce decree. The court therefore found no evidence that the parties ever intended that the insurance proceeds would be held for the benefit of the insured's children. Since there was apparently no imposition on the plaintiff ex-wife as a result of the change of beneficiary, this result would plainly seem to be correct. Moreover, far from "specifically rejecting a constructive trust theory" as petitioners contend, the court in Suydam indicated that it would impose a constructive trust in a proper case even though the cestui que trust was not the person designated by the deceased serviceman as the beneficiary of the policy.

Petitioners concede that in two cases involving National Service Life Insurance a constructive trust was imposed on the insurance proceeds for the benefit of persons other than the designated beneficiaries despite the existence of statutory language identical with 38 U.S.C. §717(a) granting to the serviceman the irrevocable right to designate the beneficiary. See Burgess v. Murray, 194 F.2d 131 (5th Cir. 1952) and Voelkel v. Tohulka, 239 Ind. 588, 141 N.E.2d 344 (1957), cert. denied 355 U.S. 891 (1957) cited at p. 12 of the petition. Petitioners have attempted to distinguish these cases on the grounds that the result reached by the courts through the imposition of a constructive trust was consistent with the intent of the deceased

serviceman. In so contending, petitioners have missed the point. The issue is not whether the result is consistent with the servieceman's wishes, but whether state law is preempted in every case by 38 U.S.C. §770(a) from interposing a constructive trust which will prevent the beneficiary designated by the deceased serviceman in accordance with the statute from retaining the proceeds. By conceding that a constructive trust may ever be imposed in such cases, regardless of the serviceman's wishes, on the basis of equitable considerations rather than a literal application of 38 U.S.A. §§717(a) and 770, petitioners have conceded away the issue on which they base their claim of federal jurisdiction. Clearly the question of what circumstances will persuade a court of equity to impose a constructive trust is a matter of state rather than of federal law.

It is not clear what position petitioners take regarding the application of the "spendthrift" provisions of 38 U.S.C. §770(g) to the case at bar. In any event, it is now clear that the prohibition of §770(g) does not apply to claims for alimony and support.

In the case of Voelkel v. Tohulka, 239 Ind. 588, 141 N.E.2d 344 (1957), cert. denied 355 U.S. 891 (1957), the court held that a constructive trust should be placed on the proceeds of military life insurance for the benefit of the deceased serviceman's relatives despite the contention of the named beneficiary that they were insulated from such claims by 38 U.S.C. §454a (analogue of §770(g)). The Court stated that:

> It is plain (that) the object of this section is to protect the beneficiaries who are, by the act, close relatives and dependents of the deceased soldier from their own improvidence. This is in effect what is commonly known as a "spendthrift" clause. Clearly the purpose of section 454a, supra, is to prevent creditors from taking the proceeds of the soldier's insurance from his beneficiaries. We feel it should be interpreted in that light. The words "equitable process whatever" is limited to those processes brought by creditors. Id at p. 346 of 141 N.E.2d. See also In re Flanagan, 31 F.Supp. 403 (D. D.C. 1940); Gaskins v. Security-First Nat. Bank, 30 Cal. App.2d 409, 86 P.2d 681, 688 (Dist. Ct. of App. 1939).

The distinction between obligations to make support and alimony payments and ordinary types of debt was also recognized by this Court in Wissner v. Wissner, 338 U.S. 655 (1950). There the Court rejected the claim of a serviceman's widow that she was entitled to a portion of the proceeds of his military life insurance since the premiums had been paid out of community property. The Court distinguished cases such as those cited above on the grounds that:

> . . . (T)he community property principle rests upon something more than the moral obligation of supporting spouse and children: the business relationship of man and wife for their mutual monetary profit . . . . Venerable and worthy as this community is, it is not, we think as likely to justify an exception to the congressional language as specific recognition of particular needs, in the alimony and support cases. Id at 660.

It is also significant that sub-section 770(g) was added in 1970 by 91 Stat. 291. Since this legislative action was taken at a time when judicial construction of the existing analogues of 38 U.S.C. §770(g) had crystallized an exception for financial obligations arising out of the family relationship, it may be presumed that Congress intended §770(g) to be construed in the same manner. Cannon v. University of Chicago, 441 U.S. 677 (1979).

There is also no reason to attribute to Congress in enacting 38 U.S.C. §770(g) an intention to abet the efforts of persons in the military service to defraud their dependents by depriving them of benefits which they had committed themselves to provide under property settlement agreements and divorce decrees. In 1974, Congress enacted several amendments to the Social Security laws designed to facilitate collection of unpaid alimony and child support payments from military personnel and other federal employees. See 93 Stat. 647, 42 U.S.C. §659, making federal employees subject to garnishment and other collection processes available under state law to enforce judgments for child support and alimony. During the floor debate on these measures, Senator Montoya stated, after inserting in the record letters received from distressed ex-wives of servicemen:

> I believe it is time for us to make . . . this small change in our law in order to correct what is patently a disgraceful situation. We must give the wives and children of Federal employees the same legal protections which we have provided for other American women and children. 120 Cong. Rec. 40339 (1974).

From the foregoing, it is clear that the decision reached below by the Maine Supreme Court does not conflict with either 38 U.S.C. §717(a) or §770. Although there have been only a few cases which have considered whether a constructive trust may be judicially imposed under circumstances similar to those presented in the case at bar, petitioners have cited no case which is in conflict with the decision of the Maine Court and several which support it.

II. PETITIONERS HAVE FAILED TO IDENTIFY ANY POLICIES REFLECTED IN THE SERVICEMEN'S GROUP LIFE INSURANCE ACT WHICH WOULD BE FRUSTRATED BY THE IMPOSITION OF A CONSTRUCTIVE TRUST IN THE CASE AT BAR.

Petitioners have engaged in a certain amount of hyperbole in describing the importance of this litigation. Citing the rising divorce rate, they have implied that the disposition of an "enormous number" of military life insurance policies stands to be affected by the outcome. Petition, p. 7. Of the servicemen who presently own such policies and actually become divorced, only a comparative few will actually commit themselves in property settlement agreements to keep their policies in effect for the benefit of their children or ex-wives. Most of these servicemen will honor their agreements. It is only those who are callous enough to renege on their commitments and defy court orders directing them to maintain their insurance in force for their family members who will provoke a request that a constructive trust be imposed.

Petitioners have also suggested that confusion will be created among divorcing parties if the decision below is allowed to stand. It is unrealistic to assume, however, that servicemen and their spouses will be aware of court

rulings regarding the relatively esoteric subject of service life insurance and govern their affairs accordingly. Even their lawyers, many of whom are likely to be general practitioners, may not know that a military life insurance policy cannot safely be made a part of the division of the marital property. Indeed, it is likely that the result petitioners propose would create a trap for the unwary from which relief through a judicially imposed constructive trust would no longer be available regardless of the equities involved.

If divorcing spouses became aware of the difficulties of binding a serviceman to maintain his life insurance in effect for his children or ex-wife, they might find it impossible to deal effectively with the policy as an asset in any division of the marital property. The insurance would have little value for the dependents because they would have no guarantee that their designation as beneficiaries would be maintained. It would also be useless to the serviceman if he had no other family members who were dependent on him for support. Thus a serviceman who intended in good faith to provide life insurance for the benefit of his children might nevertheless be required to purchase a new policy from a private insurer in order to provide acceptable assurance to his ex-wife and her attorney that his expressed intention would in fact be carried out.

Even more difficult to follow is petitioners' suggestion that the decision below will increase the administrative burdens of the private insurance companies like Prudential in carrying out the Servicemen's Group Life Insurance program. Petition, p. 8. Neither respondents nor the Maine Supreme Court have suggested that Prudential could not safely pay the beneficiary designated by the deceased serviceman as indicated by the forms in its possession and thus fully discharge its liability under the policy. Indeed, this has always been the rule even where military life insurance was not involved.

> So far as the insurance company is concerned, the one entitled to the proceeds of a policy, upon its accrual as a liability of the company, is the person named at the time as the beneficiary of the policy in accordance with the company's rules and regulations.

> That is an entirely different matter than the question which this litigation presents. Hundertmark v. Hundertmark, 372 Pa. 138, 93 A.2d 856, 859 (1952). See also Simonds v. Simonds, 45 N.Y.2d 233, 380 N.E.2d 189, 192 (1978).

The only conceivable burden which the insurance company could be required to assume would arise in those cases in which, as in the case at bar, it was made subject to court-ordered restraint on making payment before it had turned over the policy proceeds. In those few cases, it can avoid the necessity of resolving the multiple claims for payment by interpleading the contesting parties and paying the insurance proceeds into court. The cost of this relatively simple proceeding can legitimately be passed on to the policy-holders in the form of increased premiums. Moreover, the nominal expense involved is amply justified as a means of preventing the unjust enrichment of persons seeking to reap a windfall benefit from the misconduct of the insured.

Finally, it should be noted that the decision of the court below does not adversely affect the right of an insured serviceman to change the beneficiary of his service life insurance policy at any time. Except in cases where the serviceman is attempting to defraud another who has bargained for an interest in the policy proceeds, the named beneficiary will retain them. It is incredible to suppose that Congress intended that the protection afforded to its servicemen would extend to cases of this kind. Indeed, Congressional action taken to liberalize rules for subjecting federal employees to state legal process for collecting alimony and support payments, discussed above, clearly indicates that Congress had little patience with servicemen such as Richard Ridgway who attempt to avoid their legal and moral obligations to support their children and ex-wives.

In setting a standard for determining when it will intervene in a conflict between state family law and federal statutes, this Court has stated that it would limit review under the Supremacy Clause to:

> . . . a determination whether Congress has "positively required by direct enactment" that state law be pre-empted. . . . A mere conflict in words is not sufficient. State

> family and family-property law must do "major damage" to "clear and substantial" federal interests before the Supremacy Clause will demand that state law be overridden. Hisquierdo v. Hisquierdo, 439 U.S. 572 (1979) at p. 808 of 99 S.Ct.

Since no federal policies are violated by the decision of the Maine Supreme Court from which this appeal is taken, this standard plainly has not been met.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be denied.

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Auburn, Maine 04210
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